

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

DENNIS HUBBARD,

Defendant.

CASE NO. 8:06CR274

**MEMORANDUM
AND ORDER**

This matter is before the Court on the Defendant's Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence (Filing No. 41). Rule 4(b) of the *Rules Governing Section 2255 Proceedings for the United States District Courts* requires initial review of a § 2255 motion, and describes the initial review process:

The judge who receives the motion must promptly examine it. If it plainly appears from the motion, any attached exhibits, and the record of prior proceedings that the moving party is not entitled to relief, the judge must dismiss the motion and direct the clerk to notify the moving party. If the motion is not dismissed, the judge must order the United States attorney to file an answer, motion, or other response within a fixed time, or to take other action the judge may order.

The Defendant, Dennis Hubbard, pleaded guilty to Count I of the Indictment charging him with possession of child pornography, in violation of 18 U.S.C. § 2252(a)(4)(B). (Filing No. 25.) On March 5, 2007, Hubbard was sentenced to 18 months imprisonment and 3 years supervised release. (Filing No. 36.) A direct appeal was not filed.

In his § 2255 motion, Hubbard argues that he was entrapped and did not in fact possess child pornography. Although Hubbard characterizes his pleading as an "appeal," he also notes that he had one year to file his "appeal." The pleading is considered as a motion for relief under 28 U.S.C. § 2255.

By pleading guilty, Hubbard waived his right to argue that he was entrapped or that he did not possess child pornography. *United States v. Searcy*, 233 F.3d 1096, 1098 n.1 (8th Cir. 2000). Therefore, these issues cannot be pursued either on appeal or in the context of a § 2255 motion.

CONCLUSION

The Court concludes that under Rule 4(b) the Defendant's § 2255 motion must be summarily denied.

IT IS ORDERED:

1. The Court has completed the initial review of the Defendant's Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence (Filing No. 41);
2. Upon initial review, the Court summarily denies the Defendant's claims raised in the § 2255 motion, and the motion (Filing No. 41) is summarily denied;
3. A separate Judgment will be issued denying the § 2255 motion; and
4. The Clerk is directed to mail a copy of this Memorandum and Order to the Defendant at his last known address.

DATED this 14th day of April, 2008.

BY THE COURT:

s/Laurie Smith Camp
United States District Judge